CRIMINAL-LAW PROTECTION OF DOMESTIC PEACE IN THE TERRITORY OF POLAND

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1. POLAND IN THE PAST[1]

The concept of the domestic peace (*mir domowy*) is part of a broader concept of the king's peace that was called "the ruler's hand" in the first centuries of the Polish statehood. In the Polish language, the word *mir* is most often defined as: respect, esteem, regard, peace, concord, good relations. It consisted in the system of ensuring order and internal security by rulers and was divided into the peace of a person (e.g. special protection of clergymen, women, Jews and court ushers), the peace of land (e.g. a special status of the ruler's court, churches, public and even private roads, markets, fields and land borders) and mixed peace (concerning, e.g. archbishops, persons going to or coming back from a court). In the course of time, the concept of the king's peace was extended to cover, e.g. beehives, and in the fourteenth century villages, farm land, agricultural products, cattle and some forests. The domestic peace was part of the peace of land. Its most important values include peace, quiet and respect of the home.[2]

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1 The term is commonly used in literature on the history of law in relation to the history of the Polish political system and law until 1795.

2 S. Kutrzeba, *Dawne polskie prawo sądowe w zarysie (I. Prawo karne. II. Postępek sądowy)*, Lwów–Warsaw–Kraków 1921, pp. 4–5; J. Bardach, *Historia państwa i prawa Polski*, Vol. 1: *Do połowy*

The first historical information about the legal protection of the peace in the Polish common law comes from the thirteenth century. It can be found in the provisions of the oldest Polish law (usually, although imprecisely, called the Book of Elbląg), which was probably written at the turn of the fourteenth century. I have not found direct reference to the domestic peace in the Book of Elbląg but there are provisions concerning other categories of the peace of land (roads and fields).[3] As far as Jewish population is concerned, it is worth mentioning punishment for trespass to the peace of Jews' home laid down in the rights given by Bolesław, the Prince of Kalisz, in 1264. In case of a Christian perpetrator, "as a destroyer of our treasury, he should be severely punished".[4]

In the Statutes of Casimir the Great, there is a provision penalising an attack on a noble's home. In the literature on the history of law, there is a controversy over the question whether the act should be treated as an autonomous offence or a circumstance incriminating a perpetrator.[5] "An intrusion into a house, which was called the violation of the home and indirectly dishonouring (*dehonestatio*) the one who was its owner or was attacked in it, carried a penalty of fifteen units and another fifteen units for the court. When a person in the house was injured or captured, a court ruled the perpetrator should pay another fifteen units".[6] When a noble was killed during the invasion, all participants of the intrusion were punished on a par.[7]

Penalisation of the violation of the domestic peace was also laid down in the provisions of the Mazovian law. Based on the Statute of Prince Konrad III of 1496, the offence of intrusion into a house was punished by deprivation of honour and the whole property (after the settlement of compensation, the rest of the property was to be transferred to the princely treasury). The issue of alternative classification of the act also occurs in this case. It was treated as a transition from offences against persons to those against property. On the one hand, the Mazovian princes provided houses with special protection and reserved the right to judge on the trespass to the domestic peace (later, it was under the jurisdiction of *starostas*, i.e. district administrators). On the other hand, it was recognised as an incriminating circumstance in case of a killing committed or injury caused in the course of a house intrusion. It is worth emphasising the differentiation of punishment: a perpetrator

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XV wieku, Warsaw 1965, pp. 321–322; T. Bojarski, *Karnoprawna ochrona nietykalności mieszkania jednostki*, Lublin 1992, pp. 21–22.

[3] J. Matuszewski, *Najstarszy zwód prawa polskiego* (translation, edition and introduction by J. Matuszewski), Warsaw 1959, pp. 9–12, 186; J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warsaw 2005, p. 28; W. Witkowski, *Wybór tekstów źródłowych z historii prawa (epoka feudalizmu i kapitalizmu)*, Lublin 1978, pp. 23–24; R. Hube, *Prawo polskie w wieku trzynastym*, Warsaw 1874, p. 146.

[4] S. Godek, M. Wilczek-Karczewska, *Historia ustroju i prawa w Polsce do 1772/1795. Wybór źródeł*, Warsaw 2006, *Przywilej generalny dla Żydów w Wielkopolsce z 1264 r.*, p. 299 (29); R. Hube, *Prawo polskie w wieku trzynastym…*, p. 179; T. Bojarski, *Karnoprawna ochrona…*, p. 31.

[5] S. Godek, M. Wilczek-Karczewska, *Historia ustroju…*, *Suma statutów małopolskich króla Kazimierza Wielkiego według Kodeksu dzikowskiego*, p. 337 [26]; T. Bojarski, *Karnoprawna ochrona…*, pp. 31–32.

[6] R. Hube, *Prawo polskie w 14 wieku*, Warsaw 1886, p. 269.

[7] J. Bardach, *Historia państwa…*, p. 516.

had to pay damages to the injured or wergild to the victim's family and a separate compensation to "the landlord for his house intrusion".[8]

In the course of the process of strengthening political hegemony of gentry in the Polish state system, we can observe the development of a special status of gentry's homes. It can be noted in the field of private law: a Roman-Catholic wedding ceremony could be conducted at home (of course, in the presence of a priest), while townsmen and peasants could get married only in church. In practice, increased legal protection was even more important. It must be emphasized that a noble's house was treated as an asylum, it could not be searched and from 1588 even an outlaw could seek refuge there; however, it must be emphasized that in case a landlord refused to surrender an outlaw, he was criminally liable. Apart from that, it was not punishable to kill a trespasser. Mikołaj Zalaszowski, a Polish lawyer of the seventeenth century, included this special case in several most important gentry's rights, which gave this social group dominance over other social groups.[9]

However, it is necessary to draw attention to extraordinary provisions protecting gentry's homes against external attacks. At that time, it was called "an attack on a noble's home" and was classified under the "four municipal legal articles" (*Quatuor articuli iudicii castrensis*) among such acts as robbery on highways, arson and rape. In case of an offence classified under "municipal legal articles", a sedentary noble was liable in accordance with the provisions of the Statute of Warta before a municipal court, which was under the jurisdiction of a *starost*. All the other cases concerning gentry were tried by circuit courts (*sądy ziemskie*).[10]

In the nobles' Republic of Poland, an invasion of a house was classified as an offence against peace and public order. In case of a killing or a serious injury caused in the course of trespass to the home, an investigation (*skrutynium*) was conducted to establish whether the guilt was intentional or unintentional and a perpetrator was punished by death penalty. In case he was not apprehended, he was sentenced to infamy *in absentia*. The capital punishment for this offence was laid down in the legislation of the Sejm of Piotrków of 1493 and 1496, which was very important for the development of the catalogue of public penalties.[11]

The issue of the trespass to the domestic peace was also included in the draft legislation of land material law of 1532 that is known in literature on the history of law as *Correctura Iurium* or *Taszycki's Correctura*. Unfortunately, the Sejm of

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[8] K. Dunin, *Dawne mazowieckie prawo*, Warsaw 1880, p. 192; T. Bojarski, *Karnoprawna ochrona…*, pp. 32–33.

[9] J. Bardach, *Historia państwa…*, p. 492; W. Uruszczak, *Historia państwa i prawa polskiego*, Warsaw 2013, pp. 192–193; Z. Kaczmarczyk, B. Leśnodorski, *Historia państwa i prawa Polski*, Vol. 2: *Od połowy XV wieku do r. 1795*, Warsaw 1966, pp. 78, 332; T. Maciejewski, *Historia prawa karnego w dawnej Polsce (do 1795 r.)*, [in:] T. Bojarski (ed.), *System Prawa Karnego*, Vol. 2: *Źródła prawa karnego*, Warsaw 2011, p. 84.

[10] S. Godek, M. Wilczek-Karczewska, *Historia ustroju…*, *Statut warcki z 1423 r. w układzie 31 artykułów według Kodeksu dzikowskiego*, p. 344 [17]; Z. Góralski, *Urzędy i godności w dawnej Polsce*, Warsaw 1983, p. 198; M. Borucki, *Temida staropolska. Szkice z dziejów sądownictwa Polski szlacheckiej*, Warsaw 1979, p. 20; J. Bardach, *Historia państwa…*, p. 478.

[11] Sejm of Piotrków of 1493, *Volumina Constitutionum*, Vol. I, *Volumen 1*, prepared for print by S. Grodziski, I. Dwornicka, W. Uruszczak, Warsaw 1996, p. 49 (hereinafter VC); Sejm of Piotrków of 1496, *ibid.*, p. 79; Z. Kaczmarczyk, B. Leśnodorski, *Historia państwa…*, pp. 336–337, 339.

1534 did not pass the code.[12] In accordance with it, invasion of a noble's house might be classified as an offence against public security. The invasion could be classified as light (without bloodshed) or severe in the course of which a landlord, his guests, wife, son or servants were killed or injured. The former case was under the jurisdiction of a circuit court, a perpetrator had to pay 60 units and redress all financial and personal damage. The severe invasion, as one of the four municipal articles, was under the jurisdiction of a *starost* and the sanction was death penalty. There was a proposal to extend the concept of the home invasion and cover the invasion of a rented house, a *folwark* and an inn. In case of an offence committed by a servant, the master was obliged to punish his servant. Otherwise, he would be personally liable.[13]

The offence of house invasion was the subject of numerous detailed constitutions passed by the General Sejm of the First Polish Republic. T. Bojarski, following J. Makarewicz, mentions six constitutions of the Sejm in which the act was referred to (of 1493, 1496, 1598, 1601, 1613, 1768).[14] I have not succeeded in verifying all these examples[15] but based on the latest (extraordinarily thorough and reliable) publications, I can state that the trespass to the domestic peace was an extremely frequently discussed issue in the Polish parliament in the past (I refer to the successive volumes of *Volumina Constitutionum* prepared for publication by S. Grodziski, I. Dwornicka, W. Uruszczak, M. Kwiecień, A. Karabowicz, K. Fokt). Some examples are just brief mentions.[16] However, it is possible to refer to broader regulations having a more complex impact on the punishment for the trespass to the domestic peace in Poland in the past. In my opinion, the nature of the provisions laid down in 1611 was important as they introduced an orderly classification of offences under the jurisdiction of municipal courts. They were divided into two groups: criminal (*criminales*) and simple or civil (*civiles*) ones. The offence of trespass to the domestic peace was called "home invasion or house robbery, i.e. *pro spolio*". It was included in

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[12] T. Maciejewski, *Historia ustroju i prawa sądowego Polski*, Warsaw 2011, p. 106; J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju…*, p. 188.

[13] W. Uruszczak, *Korektura praw z 1532 roku. Studium historycznoprawne*, Vol. 2, Warsaw–Kraków 1991, pp. 86–87.

[14] T. Bojarski, *Karnoprawna ochrona…*, pp. 33–34.

[15] For instance, I have not found any reference to the trespass to the domestic peace made in the legislation of the General Sejm of 1598 and 1613. It seems that it results from a different interpretation of the word "invasion", which in my opinion, is the same as the terms "assault" or "home intrusion". At the Sejm of 1598, violent invasions by Courland were discussed (*Volumina legum. Prawa konstytucye i przywileje Królestwa Polskiego, Wielkiego Xięstwa Litewskiego y wszystkich prowincyi należących, Volumen secundum*, Petersburg 1859, p. 371). The Sejm of 1613 focused on regulations to fight with the invasions by Cossacks, *ibid*., Vol. 3, p. 122.

[16] For instance, the General Sejm of Kraków of 1531–1532, VC Vol. I, *Volumen 2*, prepared for publication by W. Uruszczak, S. Grodziski, I. Dwornicka, Warsaw 2000, pp. 95, 97; the General Sejm of Piotrków of 1534, *ibid*., p. 129; the General Sejm of Kraków of 1553, VC Vol. II, *Volumen 1*, prepared for publication by S. Grodziski, I. Dwornicka, W. Uruszczak, Warsaw 2005, p. 55; the Convocation Sejm of Warsaw of 1587, VC Vol. II, *Volumen 2*, prepared for publication by S. Grodziski, Warsaw 2008, p. 23; *ibid*., the General Crown Sejm in Warsaw in 1601, p. 293; the Extraordinary Sejm of Warsaw of 1662, VC Vol. IV, *Volumen 2*, prepared for publication by S. Grodziski, M. Kwiecień, K. Fokt, Warsaw 2017, pp. 227, 236; the Extraordinary Sejm of Warsaw of 1667, *ibid*., p. 269.

the first group, i.e. *criminales*, with ten other acts: rape, robbery on highways, arson, any offences committed by non-sedentary gentry, theft, manslaughter (in case of perpetrators caught red-handed), any types of offences committed by outlaws and their accomplices, fraud, failure to execute the penalty of imprisonment of killers in a tower, and special investigations *ex officio* in criminal cases (*skrutynia*).[17]

The Sejm of 1576 passed regulations penalising invasion or intrusion of a noble's house. In case a noble invaded or intruded a house with the use of force or violence and in the course of it caused battery, injury or appropriation of property, he was punished by dishonour and property seizure. The property seized was used to redress damage incurred by the aggrieved and the rest was transferred to the royal treasury. The same rules of liability (as for invasion or intrusion of a noble's house) were introduced for intrusion of a church, a cemetery, an inn and a serf's house committed with the use of violence and resulting in manslaughter, battery or injury.[18]

A special mode of the procedure in case of invasion of a noble's house or plundering it in an interregnum period was regulated in 1587.[19] It is also worth drawing attention to the provisions making it possible to postpone trials by *dilatio propter negotia publica*. On the one hand, the concept of public service was extended, and on the other hand, there was a ban on this form of postponement in case of some offences, including a house invasion. It concerned e.g. soldiers during war campaigns.[20]

In the period of Stanisław August Poniatowski's reforms, there was a tendency to extend the catalogue of public crimes. It also concerned a house invasion. It seems that the reason for that was the wish to protect nobles' houses against many invasions organised at the time by aristocrats' guests (the excesses of brawlers connected with Prince Karol Stanisław Radziwiłł "My Dear Sir" were especially famous).[21] The codification drafted in the late 1770s stipulated penalisation of the trespass to the domestic peace (*Zbiór praw sądowych* by Andrzej Zamoyski). The offence was called invasion of a house and included in the catalogue of public offences.[22]

It is worth referring to the provisions of the codified Lithuanian law because it was in force not only in the Grand Duchy of Lithuania but also in Wołyń, Bracław and Kiev Voivodeships (Second Statute of 1566). Apart from that, due to clarity, precise language and high legal values, the Third Statute of Lithuania of 1588 was used in the Polish Crown as auxiliary law.[23] In accordance with the Statutes of Lithuania,

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17 The Extraordinary Sejm of Warsaw of 1611, VC Vol. III, *Volumen 1*, prepared for publication by S. Grodziski, M. Kwiecień, A. Karabowicz, Warsaw 2010, p. 60.

18 The General Sejm of Toruń of 1576, VC Vol. II, *Volumen 1*, pp. 387–388.

19 The Convocational Sejm of Warsaw of 1587, VC Vol. II, *Volumen 2*, pp. 19–20, 28.

20 The General Sejm of Piotrków of 1567, VC Vol. II, *Volumen 1*, p. 205; the General Sejm of Warsaw of 1579–1580, *ibid.*, pp. 441–442; the General Sejm of Warsaw of 1581, *ibid.*, p. 453; Z. Kaczmarczyk, B. Leśnodorski, *Historia państwa*…, p. 386.

21 Z. Kaczmarczyk, B. Leśnodorski, *Historia państwa*…, p. 573.

22 E. Borkowska-Bagieńska, "*Zbiór Praw* Sądowych" Andrzeja Zamoyskiego, Poznań 1986, p. 254.

23 J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju*…, p. 190.

prosecution of invasion of a noble's house or premises was under the jurisdiction of a municipal court subordinate to a *starost* or a voivode performing the function of a *starost*.[24] The First Statute of Lithuania of 1529 stipulated capital punishment for that act in case it was connected with injury caused to another person. In the Second Statute, the provisions were repeated and determined the penalty more precisely: in case of no injury, a fine of 12 rubles (i.e. 418 zlotys and 22 groszes) was imposed. A perpetrator was also obliged to redress the damage. A penalty of 12 weeks' imprisonment in a tower was added in the Third Statute of Lithuania. In addition, liability of co-perpetrators (accomplices) of invasion in conjunction with injury was regulated. It carried a penalty of imprisonment in a tower for one year and six weeks. However, it did not concern persons subordinate to a noble (servants).[25] Like in Poland, the domestic peace of a noble was highly valued. A perpetrator of a house invasion and his accomplices could be killed with impunity and the damage as well as a fine for the act was covered from the invader's property.[26] On the other hand, the domestic peace was connected with the house owner's special liability for injuries incurred by his guests. It was precisely stipulated in the Second Statute that when a host "belonged in the harming of his guest", he should redress all damage and could hunt for "invaders or wreckers". The Third Statute stipulated that in case of an insult, battery or injury committed by a host, apart from sanctions for the acts, he was punished for the violation of the domestic peace. A special status of a noble's house also results from the fact that the provisions protecting his peace were treated as a kind of model: perpetrators of invasion of a church, a cemetery, a school as well as a Roman-Catholic or Orthodox Church priest or a preacher's house were to be punished in the same way as "invaders of a noble's house".[27]

Besides Polish lands common law, also German law was in force in the territory of former Poland. It started to be introduced at the beginning of the thirteenth century in conjunction with the foundation of towns in accordance with German town law (Lübeck law, Magdeburg law and its variations: Chełmno law and Środa-Śląska law). The term of Polish municipal law is used in literature on the history of law in relation to the next centuries. It regulated the protection of the domestic peace.

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[24] T. Czacki, *O litewskich i polskich prawach, o ich duchu, źródłach, związku i o rzeczach zawartych w pierwszym Statucie dla Litwy 1529 roku wydanem*, Vol. 2, Warsaw 1801 (offset reprint by Poznańskie Zakłady Graficzne im. Marcina Kasprzaka of the volume provided by the National Library of Poland, Warsaw 1987), pp. 92–98.

[25] *Statut Wielkiego Księstwa Litewskiego z dołączeniem treści konstytucji przyzwoitych*, Part II, Chapters seven to the end, Saint Petersburg 1811, pp. 140–141, Chapter eleven, Article III; T. Czacki, *O litewskich…*, Vol. 2, pp. 112–121.

[26] The Second and the Third Statutes of Lithuania lay down detailed provisions concerning evidence that an invader's killing or injury took place in the course of the invasion. T. Czacki, *O litewskich…*, Vol. 2, p. 127. The table containing Polish and Lithuanian coins that were used over the period of more than 450 years (from 1300 till 1786) is available in T. Czacki, *O litewskich i polskich prawach, o ich duchu, źródłach, związku i o rzeczach zawartych w pierwszym Statucie dla Litwy 1529 roku wydanem*, Vol. 1, Warsaw 1800, p. 179. It provides data concerning coins mentioned in the text: groszes, zlotys and Lithuanian rubles.

[27] *Statut Wielkiego Księstwa Litewskiego*, Vilnius 1786, p. 271, Chapter eleven, Article III; T. Czacki, *O litewskich…*, Vol. 2, pp. 129–130, 135.

Municipal law classified invasion of a house as one of the most serious offences. The fact that such acts were excluded from lay-judge courts' jurisdiction in Kraków confirms that. The jurisdiction over such cases in the thirteenth century was reserved for a prince.[28] The trespass to the domestic peace by breaking into a house, battery, injury, killing the inhabitants, and damage to household equipment was called an assault on a house and carried a death penalty by decapitation.[29] In case of a perpetrator who was a servant, his master was obliged to impose the penalty. Otherwise, he became liable. In case of a servant's escape, his master and two other men had to swear an oath that this had happened without his knowledge and will. A lodger had the same right to protect the domestic peace as the owner of a house.[30] The only exception concerned the trespass to the domestic peace in case of a threat of fire. A neighbour could break into the house of another in order to save his property from burning. Civil liability for such an act was regulated in a primitive way. It depended not on the existence of a threat but on the result that actually occurred. When the fire reached that house, the perpetrator was not liable. However, when the fire did not reach the house, the neighbour had to redress damage, unless he trespassed the domestic peace as a result of the authorities' order.[31]

It is worth referring to the research done by Polish historians of law based on archival sources of the judicial practice in Polish towns: W. Maisel (Poznań) and M. Mikołajczyk (towns of Małopolska region).[32] According to them, the offence of invasion of a house was not always punished by death. A penalty of imprisonment was also applied. M. Mikołajczyk quotes a sentence of imprisonment for "a house intrusion" of 1718. A. Maisel presents a similar example.[33] Co-perpetrators of a house intrusion were punished in the same way.[34] Attention should be drawn to the fact that the scene was examined in the course of the proceedings concerning the trespass to the domestic peace (equipment thrown through the windows, doors and window shutters broken, shot or cut with swords, wounds of the injured persons). W. Maisel found that the perpetrators in Poznań were most often the representatives of gentry.[35]

It is worth highlighting the special role of Chełmno law in Royal Prussia (without Warmia and Braniewo, Elbląg and Frombork, which were founded based on Lübeck law). From 1476 Chełmno law was treated as classless and nationwide. Intrusion of a house was classified as an offence against the public peace. It consisted in an armed attack on a house or property of another and in the use of violence against the owner or his property. A perpetrator was subject to a death penalty.[36]

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[28] J. Bardach, *Historia państwa…*, p. 277.

[29] Z. Kaczmarczyk, B. Leśnodorski, *Historia państwa…*, p. 356; B. Groicki, *Artykuły prawa majdeburskiego*, Warsaw 1954, pp. 40–41.

[30] B. Groicki, *Tytuły prawa majdeburskiego*, Warsaw 1954, pp. 244–245, 254–255.

[31] B. Groicki, *Artykuły prawa…*, p. 65.

[32] W. Maisel, *Poznańskie prawo karne do końca XVI w.*, Poznań 1963; M. Mikołajczyk, *Przestępstwo i kara w prawie miast Polski południowej XVI–XVIII wieku*, Katowice 1998; *idem*, *Proces kryminalny w miastach Małopolski XVI–XVIII wieku*, Katowice 2013.

[33] M. Mikołajczyk, *Przestępstwo i kara…*, p. 235; W. Maisel, *Poznańskie prawo…*, p. 296.

[34] M. Mikołajczyk, *Przestępstwo i kara…*, p. 54.

[35] W. Maisel, *Poznańskie prawo…*, p. 296; M. Mikołajczyk, *Proces kryminalny…*, p. 398.

[36] D. Janicka, *Prawo karne w trzech rewizjach prawa chełmińskiego z XVI wieku*, Toruń 1992, pp. 6, 90. The three amendments to the bills mentioned in the title of the monograph were never

2. PERIOD OF THE PARTITIONS OF POLAND

As a result of the three Partitions (of 1772, 1793 and 1795), Poland lost its independence. From that time, the offence of the trespass to the domestic peace was penalised based on the provisions of criminal codes of the invading countries.[37]

The law that was in force in the Kingdom of Prussia was introduced to the territory of Poland occupied by Prussia in the course of the three successive partitions in a gradual and complicated way. For some time, Polish law was in force as provincial law.[38] The provisions of the General State Laws for the Prussian States (*Landrecht*) of 1794 were permanent in nature. The offence of the trespass to the domestic peace was called "the violation of the laws of the home". It was included in Chapter 9 entitled "On private offences".[39]

The provisions of Prussian *Landrecht* stipulated that nobody could invade a house, a flat or another place of a person's residence against his or her will. The concept of the violation of the laws of the home was defined very broadly because it covered all forms of acts committed by an invader, which he had no right to do. A house resident had the right to force the intruder to desist from his illegal activities (but after a warning). The resident's rights resulting from the laws of the home were to be applied in such a way that would not violate the inviolability and honour of the intruder. In case of the perpetrator's persistent and lawless conduct that was not intended to insult or commit an offence, he was fined or imprisoned. However, in case of the trespass to the domestic peace in conjunction with another crime, a more severe penalty was to be imposed. The above-presented rules of punishment for the infringement of the laws of the home were also applied to squares surrounded by walls or fences and even open-space fields in case their owner by its cultivation or special border signs banned other people from trespassing on them.[40]

Prussian *Landrecht* of 1794 was binding until the Prussian criminal code of 1851 entered into force and constituted the basis for the criminal code of the North German Confederation of 1870. The latest codification was then recognised as the criminal code of the German Reich based on the statute of 15 May 1871. The

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passed and did not come into force officially but were used in judicial practice in Royal Prussia and assessors' crown courts in the Kingdom, *ibid.*, p. 3.

[37] In my opinion, what constituted an exception was the Penal Code of the Kingdom of Poland of 1818 (*Kodeks karzący Królestwa Polskiego z 1818 roku*) that from the formal point of view was a statute passed by the Sejm of the Kingdom of Poland. A question arises whether the Kingdom of Poland was autonomous at the time, and the Sejm was the only autonomous body. However, it seems that this code should not be recognised as the legislation of the occupying countries because Polish scholars and to a great extent also politicians elected to the lower chamber of the Sejm had influence on the development of its content.

[38] Z. Radwański, J. Wąsicki, *Wprowadzenie Pruskiego Prawa Krajowego na ziemiach polskich*, Czasopismo Prawno-Historyczne Vol. VI, No. 1, Warsaw 1954, pp. 196–208; J. Bardach, M. Senkowska-Gluck (eds), *Historia państwa i prawa Polski*, Vol. 3: *Od rozbiorów do uwłaszczenia*, Warsaw 1981, pp. 30–31.

[39] *Powszechne Prawo Kryminalne dla Państw Pruskich*, Part two, I. Stawiarski (trans.), Warsaw 1813, p. 103.

[40] *Ibid.*, pp. 105–107, §§525–537.

provisions of the code of 1871 were in force in the Republic of Poland when it regained independence in 1918.[41]

The provisions of *Theresiana* of 1768, the codification fundamental for the Habsburg Monarchy, were not introduced in the Polish territories occupied by Austria. It was decided that it was "totally different from Polish law". *Josephina* of 1787 was another great and important code. The West-Galician criminal law statute of 1796, which was introduced in the Polish territories acquired as a result of the Third Partition (the territory occupied by Austria was called West Galicia), can be recognised as an extraordinary experiment. The provisions of this codification were copied to a great extent (it also concerned the issue of the trespass on the domestic peace) in the Austrian national criminal code of 1803 called *Franciscana*. After several years of changes in the legal status in the Habsburg Monarchy at the turn of the nineteenth century, the latest codification stabilised the situation in the field of criminal substantive law for almost half a century.[42]

The provisions of *Franciscana* regulated the trespass to the domestic peace rather briefly. The act was classified as a felony and was placed in Chapter IX entitled: "On public assaults".[43] It was decided to penalise the invasion of land by a group of intruders. An attack on a house or an apartment is mentioned in the successive part but, in such a case, it was assumed that only one person could be a perpetrator. Moreover, the feature of an attack on a house or an apartment was its armed nature connected with the use of violence against the owner or residents, or their property. It is characteristic that a perpetrator's reasons for committing the act were listed (revenge for the supposed wrong, hatred, claiming the presumed right, an attempt to exact a promise or obtain some kind of evidence). The sanction for this offence was increased-rigour imprisonment for a period of one to five years. A penalty for accomplices was to be more lenient (imprisonment for six months to one year).[44]

The provisions of *Franciscana* were in force in the Habsburg Monarchy, and thus also in the Polish territories occupied by Austria, till 1952. The Austrian statute of 27 May 1852 was a successive codification of criminal substantive law. The provisions of that legal act were in force in Poland after it regained independence in 1918.[45]

In the Duchy of Warsaw (1807–1815), as far as the protection of the domestic peace is concerned, the above-mentioned provisions of Prussian *Landrecht* of 1794

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41 T. Maciejewski, *Historia ustroju…*, p. 262.

42 §58 of the Penal Code of West Galicia (Chapter VI: "O gwałtach publicznych"), *Zbiór ustaw dla Galicyi Zachodniej, drukiem Józefa Hraszańskiego, C.K. Niemieckiego i Polskiego nadwornego Topografa i Bibliopoli*, Vienna 1796, p. 32; S. Salmonowicz, *Prawo karne oświeconego absolutyzmu. Z dziejów kodyfikacji karnych przełomu XVIII/XIX w.*, Toruń 1966, pp. 47–167; S. Grodziski, S. Salmonowicz, *Ustawa karna zachodniogalicyjska z roku 1796. Zarys dziejów i charakterystyka*, Czasopismo Prawno-Historyczne Vol. XVII, No. 2, Warsaw 1965, pp. 134–144; J. Bardach, M. Senkowska-Gluck (eds), *Historia państwa…*, Vol. 3, pp. 775–782.

43 *Księga ustaw na zbrodnie i ciężkie policyjne przestępstwa*, Vienna 1817, Chapter IX, pp. 44–48.

44 *Ibid*., p. 45, §§72–73.

45 A. Korobowicz, W. Witkowski, *Historia ustroju i prawa polskiego (1772–1918)*, Warsaw 2009, pp. 226–227.

remained in force. In the southeast territories attached to the Duchy in 1809, the regulations of *Franciscana* of 1903 were in force.[46]

During the Congress of Vienna (1814–1815) the Polish territories were divided again, which also influenced the situation concerning the criminal substantive law in force. The Duchy of Warsaw stopped existing. Part of its territory constituted the Grand Duchy of Posen subordinate to the King of Prussia (thus, the provisions binding in the territories occupied by Prussia were in force there). The remaining territories of the Duchy of Warsaw were included in Congress Poland and the free city of Kraków.[47]

"The Free, Independent and Strictly Neutral City of Kraków with its Territory", most often called the Republic of Kraków in the literature on the history of law, existed in the period 1815–1846 and was controlled by the three neighbouring superpowers, which partitioned Poland. It covered a very small territory of 1,150 square kilometres with Kraków, three small towns (Trzebinia, Chrzanów and Nowa Góra) and 224 villages. As far as the issue of the trespass on the domestic peace is concerned, the provisions of *Franciscana* of 1803 were in force there.[48]

After the foundation of the Kingdom of Poland, work on the codification of criminal substantive law started in 1816. In its course, the solutions tested in the judicial practice of the Habsburg Monarchy were used starting with the West Galician criminal statute of 1796 through *Franciscana* of 1803. However, the construction of the offence of the trespass on the domestic peace constituted one of the moot points in the discussion over the project in the Council of State of the Congress Kingdom of Poland. Joining and equalising two actual states in one article: the trespass on peaceful possession of land of another by a few people and armed invasion of a house of another by a single perpetrator and the use of violence against the inhabitants or property. As a result, it was decided to distinguish the two different offences.[49]

The Sejm passed the penal code of the Kingdom of Poland as a statute in 1818. The offence of invasion of a house was classified as a felony and was placed in Chapter X entitled "On felonies of public assault". A perpetrator who on his own or with other persons committed an armed invasion of a house or an apartment with the use of violence against the owner, residents or property was subject to punishment. The sanction was increased-rigour imprisonment for a period of three to six years. Accomplices were liable as perpetrators of a crime, not felony. As it has been mentioned above, the model known from *Franciscana* of 1803 was abandoned because the felony of invasion of a house was distinguished from the crime of trespass on peaceful possession of land of another. However, some significant

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[46] *Ibid*., p. 49.

[47] W. Witkowski, *Prawo karne na ziemiach polskich w dobie zaborów i w pierwszych latach II RP (1795–1932)*, [in:] T. Bojarski (ed.), *System Prawa Karnego*, Vol. 2: *Źródła prawa karnego*, Warsaw 2011, Chapter I, § 2, pp. 114–115; J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju…*, p. 360.

[48] A. Korobowicz, W. Witkowski, *Historia ustroju…*, p. 182; W. Witkowski, *Prawo karne…*, p. 116.

[49] J. Śliwowski, *Kodeks karzący Królestwa Polskiego (1818). Historia jego powstania i próba krytycznej analizy*, Warsaw 1958, pp. 38–40, 115–116; W. Witkowski, *Prawo karne…*, pp. 109–110.

similarities can be indicated. In the penal code of the Kingdom of Poland, also some reasons that could make an invader commit this act were listed (revenge for the wrong incurred, satisfying one's anger, obstinacy or hatred and pursuit of the exercise of the claimed rights).[50]

The Code of main and corrective penalties of 1847 was another codification in the territory of the Kingdom of Poland. The Russian code of 1847 having the same title was its prototype. The Code of main and corrective penalties was at the clearly lower level than the Polish statute of 1818, both from the point of view of the previous content and the types and severity of penalties as well as the legislative technique.[51]

The trespass on the domestic peace in the code of 1845 was called breaking into or invasion of an apartment of another. It was placed in Chapter X entitled "On offences against private persons' life, health, freedom and honour". Within this Chapter, Subchapter VIII entitled "On violent assault" was distinguished. An intruder who broke into or invaded an apartment of another with no legal reasons was recognised as a perpetrator of this offence. The act could not be connected, however, with an attempt to kill, rob or steal. But its violent nature was the feature and the reason for its commission was the intent to insult or threaten. Prosecution took place as a result of a complaint made by a landlord, an administrator or a person attacked. The sanction was imprisonment for a period of three weeks to three months. A special exception connected with abuse of alcohol is worth pointing out. A perpetrator "in the state of drunkenness" (and not intending to threaten or insult) was subject to a penalty of imprisonment only for a period of seven days to three weeks.[52]

An invader was also obliged to redress any damage to property and compensate financial loss. A case of personal insult to a landlord or residents was treated in a more detailed way. A perpetrator was obliged to apologise to the insulted person and the possible punishment was "confinement in a correctional house and deprivation of some (…) special rights and privileges, or the same penalty for a period of six months to one year without deprivation of special rights and privileges". Personal insult could be prosecuted *ex officio*.[53]

In 1876, the Russian criminal code of 1866 was introduced in the Kingdom of Poland. In fact, it was a new edition of the code of 1845. The changes did not constitute a reform of criminal law.[54] However, they influenced the issue of the trespass on the domestic peace we are interested in. The act lost its special status

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[50] *Prawo Kodeksu karzącego dla Królestwa Polskiego z 14 kwietnia 1818 r.*, Dziennik Praw Królestwa Polskiego Vol. V, pp. 52–53, Articles 95–96.

[51] A. Korobowicz, W. Witkowski, *Historia ustroju...*, p. 139.

[52] *Kodex kar głównych i poprawczych, Warszawa w Drukarni Kommissyi Rządowej Sprawiedliwości 1847*, p. 751, Article 1034.

[53] *Ibid*., p. 753, Article 1035; F. Maciejowski, *Wykład prawa karnego w ogólności z zastosowaniem kodeksu kar głównych i poprawczych z dniem 20 grudnia/1 stycznia 1848 r. w Królestwie Polskim obowiązującego tudzież ustawy przechodniej i instrukcji dla sądów*, Warsaw 1848, p. 442.

[54] K. Grzybowski, *Historia państwa i prawa Polski*, Vol. 4: *Od uwłaszczenia do odrodzenia państwa*, Warsaw 1982, pp. 239–244; W. Witkowski, *Prawo karne...*, pp. 112–113; A. Korobowicz, W. Witkowski, *Historia ustroju...*, pp. 140–141.

of a separate offence (in the former codification, as it has been indicated above, these were Articles 1034 and 1035). In the code of 1866, liability was laid down in accordance with general rules.[55]

This legal state remained until the Russian authorities evacuated from the territory of the Kingdom of Poland in 1915, i.e. until the end of the Partition era. However, it is necessary to mention the code of 1903, commonly called Tagantsev's one. Only some of its parts were introduced in 1904 (the provisions concerning internal and external security of the state and the provisions of the general part that were in conjunction with the former). However, as a result of the decisions made by the Central Powers' occupational authorities and the new bodies of Polish authorities created in the period of World War I, it was in force in the independent Polish state (after its adaptation to the new Polish reality). It was not until 1932 that the Polish Criminal Code substituted for it.[56]

3. SECOND POLISH REPUBLIC

The actual state concerning the trespass on the domestic peace known in all criminal statutes of the states occupying Poland was in force in the country after it regained independence (until the Criminal Code of 1932 entered into force).

In the Russian criminal code of 1903, the offence was regulated (in a rather casuistic way) in Articles 511 and 512 (placed in Part 26 "Offences against personal liberty"). Article 511 criminalised the failure to leave an apartment of another or another place inhabited or staying in such an apartment or a place at night without consent of the entitled person,[57] and Article 512 (in the first part) stipulated liability for intentional breaking into "somebody else's building or another facility or place fenced with the use of violence against a person, a punishable threat, and damage to or removal of an obstacle blocking access".[58] Apart from that, there were aggravated types of the offence (intrusion at night – Article 512 part 2[59]) or intrusion at night by two or more people, which did not constitute a criminal gathering or by one

[55] S. Budziński, *O przestępstwach w szczególności. Wykład porównawczy z uwzględnieniem praw obowiązujących w Królestwie Polskim i Galicyi austriackiej*, Warsaw 1883, p. 53.

[56] A. Korobowicz, W. Witkowski, *Historia ustroju...*, pp. 141–142, 235–236; W. Witkowski, *Prawo karne...*, pp. 113–114.

[57] Article 511: "A person guilty of: (1) intentional failure to leave inhabited house of another or another place like this in spite of the host's or his representative's request when the guilty person entered such a building or place secretly or without permission; (2) intentional stay in the inhabited house of another or another place like this at night without the host's or his representative's knowledge when the guilty person entered the building or the place secretly or without permission; shall be subject to a penalty of imprisonment for up to three months or a fine of up to 12,000 Polish marks."

[58] The offence carried a penalty of imprisonment or a fine of up to 20,000 Polish marks.

[59] Article 512, part 2: "If the intrusion takes place at night, the perpetrator shall be subject to a penalty of imprisonment for up to six months."

person but armed (Article 512 part 3). An attempt to commit offences determined in Article 512 was punishable (Article 512 part 4).[60]

The German criminal code of 1871, in §123 (contained in Chapter VII "Felonies and crimes against public order"), linked two forms of a criminal act (breaking into a house of another and not leaving it). In accordance with §123 part 1, criminalisation concerned illegal breaking into somebody else's apartment, company premises or fenced real estate, or locked public premises or public traffic facilities as well as failure to leave them by persons without authorisation to be in them when requested by an entitled person (carrying a penalty of a fine of 300 marks or imprisonment for up to three months). As W. Makowski wrote, the German criminal code "in relation to the two, takes into account a danger of committing other offences, which may be connected with this activity, and from that point of view, recognises an aggravated case when the trespass to the domestic peace is committed by an armed perpetrator or a few persons in cooperation (Article 123 para. 2)[61]". Prosecution of offences classified in §123 was initiated on a motion, which could be withdrawn (§123 part 4).

On the other hand, the Austrian criminal code of 1852 determined the trespass on the domestic peace as a case of public assault (in Chapter IX "On public assault"). Section 83 regulated the trespass on the domestic peace (*Hausfriedensbruch*) together with the trespass on the peace of the land (*Landfriedensbruch*).[62] As E. Krzymuski wrote, "The offences of the trespass on the peace of land are committed by those who in company of a few, thus more than two, other people (*mit gesammelten mehreren Leuten*) without permission, because with omission of superiority, by violent intrusion of the land of another, restrict a person's free possession of this land or the rights attached to it".[63] On the other hand, the trespass on the domestic peace occurred when "somebody because of any reason or in company of a few persons, or on his own but armed, invades somebody else's house or apartment and there commits an assault against residents or their property".[64] In accordance with §83, he should be subject to a penalty of increased-rigour imprisonment for a period of one to five years, and those "who agreed to be used as accomplices should be imprisoned for six months to one year".

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[60] For more on offences under Article 512 of Tagancev's code, compare W. Makowski, *Kodeks karny obowiązujący czasowo w Rzeczypospolitej Polskiej na ziemiach b. zaboru rosyjskiego*, Vol. 3, Warsaw 1922, pp. 178–181.

[61] W. Makowski, *Prawo karne. O przestępstwach w szczególności. Wykład porównawczy prawa karnego austriackiego, niemieckiego i rosyjskiego obowiązującego w Polsce*, Warsaw 1924, pp. 317–318. Under §123 part 2 it is stipulated as follows: "If an act is committed by an armed person or a few persons together it shall result in a fine of up to 1,000 marks or imprisonment for up to one year".

[62] For more details, compare E. Krzymuski, *Wykład prawa karnego (ze stanowiska nauki i prawa austriackiego)*, Vol. 2, Kraków 1902, pp. 331–335. The provision of §83 stipulated as follows: "Whoever without authorisation and with a few other people in a violent attack violates peaceful possession of land and related rights of another person or whoever, even without accomplices, being armed intrudes somebody else's house or apartment, commits an assault on a host or residents, the property and objects either in order to take revenge for his alleged loss or in order to claim his rights, obtain a promise or evidence, or to satisfy hatred."

[63] E. Krzymuski, *Wykład*…, p. 332.

[64] *Ibid*., p. 334.

The trespass on the domestic peace was placed in Chapter XXXVI ("Offences against liberty") of the Criminal Code of 1932. Apart from the trespass on the domestic peace (Article 252), the Chapter also listed four other prohibited acts: false imprisonment (Article 248), trafficking in slaves (Article 249), punishable threat (Article 250) and extortion (Article 251). In general, personal liberty of an individual used within the limits of the legal order established in society was recognised as the object of legal protection of the entire above-mentioned group of offences. It was stated that the liberty might be interpreted in two ways: (1) as physical liberty, freedom to move from place to place; and (2) as moral liberty, the freedom to dispose of one's property, the right to exercise one's rights or not and to undertake any type of activities.[65] However, in the above-mentioned cases, personal liberty may be an object of crime only when criminal conduct is targeted at it. Therefore, a man's free will (as an indication of liberty) makes use of protection only when it conforms to the legal order and concerns only those man's rights that he may freely dispose of.[66] In case of a link between the infringement of such a decision and other personal or financial rights, it was recognised that the classification should be based on that other special right. And thus, e.g. the infringement of the freedom to dispose of property was recognised as an assault against property, and the infringement of the freedom to decide on sexual life as an assault against sexual liberty.[67] Therefore, Chapter XXXVI of the Criminal Code of 1932 unambiguously covered only this group of assaults against a person's rights in case of which the physical or moral liberty constitutes the dominant right and cannot be recognised as supplementation (or a component) of another infringed private or public right. Thus, consistently, such offences as rape (Article 204), an indecent act with a person with mental disorder or under the age of 15 (Article 203), and an indecent act resulting from the abuse of the relationship of subjection (abuse of power and control) (Article 205) were not included in Chapter XXXVI. All these offences were placed in Chapter XXXII entitled "Indecency". In accordance with Article 252, whoever invades somebody else's house, apartment, premises, room, company, fenced real estate because it is a place of residence, or fenced and serving as a place of stay, or in spite of the request of an entitled person does not leave the place, is subject to a penalty of imprisonment for up to two years or a fine (prosecution was initiated based on a private charge).[68] In the legislative motives for the Criminal Code of 1932 we can read:

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[65] Komisja Kodyfikacyjna Rzeczypospolitej Polskiej, Sekcja Prawa Karnego, Projekt kodeksu karnego, Vol. 5, No. 4, Warsaw 1930, p. 193.

[66] *Ibid.*

[67] *Ibid*.

[68] As J. Makarewicz noticed, "An offence under Article 252 is a relic of the former trespass on the domestic peace (of a sacred nature: the infringement of the peace of someone under the care of gods): thanks to this origin, the former statute recognised this offence as an incident of the so-called public assault or a crime against public order, while in fact it is an offence against an individual's interests, i.e. against an individual's freedom to be in disposal of one's apartment (in accordance with the English castle principle: 'my home is my castle'). The Polish code, moving the centre of gravity in the field of individual's liberty, gives this offence a specific nature. What is going to be decisive is not the modus operandi of getting into an apartment of another but just the fact whether the entry to somebody else's apartment covers the infringement of the freedom of disposal of this apartment, which in these conditions is the right that is subject to violation."

"According to the bill, the intrusion of a house is an offence against personal rights, it is an infringement of an individual's liberty within a broad sense of the word, i.e. a breach of the right to exclusive and free use of the home. At the same time, the home should be interpreted not only as a citizen's apartment in the everyday meaning of the word, but also the area where a citizen works or which he, as a result of residence or work, can freely dispose of. (…) The method of acting was specified in Article 252 as a criminal act in two forms: invasion of or refusal to leave places listed in Article 252. The bill did not maintain any forms of acting or classification of circumstances such as intrusion at night, possession of firearms, commission of an act by a few persons collectively, use of threat, etc., of the binding legislation and did not adopt them from other statutes and projects. All these circumstances were partially linked with the former treatment of the trespass on the home as a form of public assault. In particular cases, e.g. in case of violence against a person or damage to objects preventing access etc., one can speak about concurrence of offences. If invasion of somebody else's premises is part of another criminal intent, e.g. theft or robbery etc., the liability for the invasion of a house will embrace the main act."[69]

4. POLISH PEOPLE'S REPUBLIC

Article 143 of the Criminal Code Bill of 1956 (placed in Chapter XVI "Offences against a citizen and his rights", and more precisely under its second title: "Offences against a man's liberty and dignity")[70] treated the trespass on the domestic peace in a rather concise way. The mentioned provision stipulated: "Whoever invades somebody else's apartment, premises or a fenced place is subject to a penalty of deprivation of liberty for up to one year or correctional work, or a fine of up to PLN 5,000".

J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1932, p. 350. Also compare the Supreme Court judgment of 15 April 1935, III K 196/35, OSN/K 1935, No. 12, item 500 ("In order to recognise a criminal act under Article 252 of the Criminal Code, it is not decisive what the modus operandi of getting to the apartment is but the fact whether it covers the concept of the infringement of the freedom of disposal of the apartment; thus, it is enough to recognise any methods of getting to an apartment without permission, even the deemed one, of an entitled person, i.e. by force, deception, under false pretences, opening the door with the use of a master key, etc.").

[69] Motives, Vol. V, No. 4, p. 202. For more on the offence under Article 252 of the Criminal Code of 1932, compare L. Peiper, *Komentarz do kodeksu karnego, prawa o wykroczeniach, przepisów wprowadzających obie te ustawy*, Kraków 1936, pp. 513–515; W. Makowski, *Kodeks karny. Komentarz*, Warsaw 1933, pp. 562–564.

[70] The whole Chapter XVI was composed of eight parts and had a total of 59 Articles. The second part of this Chapter ("Offences against liberty and dignity") includes the following offences: deprivation of liberty (Article 140), threat (Article 141), coercion (Article 142), trespass on the domestic peace (Article 143), rape and an indecent act with a mentally ill person (Article 144), an indecent act with the abuse of the relationship of subjection (Article 145), procuring, pimping and facilitating prostitution (Article 146), distribution of pornography (Article 147), infringement of bodily inviolability (Article 148), infringement of correspondence secrecy (Article 149), slander (Article 150), and insult (Article 151). Therefore, it is seen that the Bill of 1956 clearly departs from the uniform concept of the protection of liberty laid down in the Criminal Code of 1932 and mixes three areas: liberty, dignity and decency in this sub-chapter.

On the other hand, the Bill of 1963 determined the offence of the trespass on the domestic peace in a very casuistic way (placing it in Chapter XXIV "Offences against a man's liberty and dignity"),[71] in which invasion (classified in Article 261 §1)[72] was distinguished from refusal to leave (classified in Article 261 §4[73] constituting a type of lesser significance[74]), and moreover, a more aggravated type in relation to active trespass on the domestic peace was distinguished in case of a perpetrator's act committed at night, together with another person or with the use of weapons or other dangerous tools (Article 261 §2). Prosecution of the basic types (§1 and §3) was initiated based on private charges and the type of lesser significance (under §2) on the motion of the aggrieved. The Bill of 1966 classified the offence of the trespass on the domestic peace in Article 164 placed in Chapter XXII ("Offences against liberty and dignity")[75] stipulating as follows: "Whoever invades somebody else's house, apartment, premises or fenced real property connected with their use or serving as a place of stay, or does not leave them regardless of the entitled person's request, shall be subject to a penalty of imprisonment for up to two years, correctional work or a fine." Prosecution was initiated based on private charges (Article 164 §2). The successive Bill (of 1968) stipulated in Article 177 (placed in Chapter XXIII "Offen-

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[71] This Chapter (XXIV) contains the following offences: deprivation of liberty (Article 258), threat (Article 259 – considerably extended in comparison with Article 250 of the Criminal Code of 1932), coercion (Article 260), trespass on the domestic peace (Article 261 – with five paragraphs added), infringement of the secrecy of correspondence (Article 262 – also with five paragraphs added), recording another person's speech on a tape or disc without the person's consent (Article 263), dissemination of another person's image without his/her consent (Article 264), disclosure of personal secrets (Article 265), performance of medical treatment without an entitled person's consent (Article 266), appropriation of somebody else's authorship (plagiarism) (Article 267), abuse of a post to the detriment of another person because of criticism the person expressed (Article 268), slander (with eight paragraphs added in two Articles 269 and 270), insult (Article 271), infringement of bodily inviolability (Article 272), sexual intercourse with a person under the age of 15 or a person mentally ill (Article 273), rape (Article 274), abuse of the relationship of subjection (Article 275), procuring, pimping and facilitating prostitution (Article 276), taking a person abroad in order to make her prostitute (Article 277), an aggravated type of offences laid down in Articles 276 and 277 (Article 278), indecent act in a public place (Article 279), and distribution of pornography (Article 280). What strikes in the Bill is its excessive casuistic approach and as far as offences against liberty are concerned, the Bill of 1963 also decidedly departs from the concept of the Criminal Code of 1932 and treats the concept of liberty too broadly and ambiguously.

[72] Whoever breaks into somebody else's building, apartment, premises or fenced area connected with their use or constituting the place of residence, or somebody else's means of transport, shall be subject to a penalty of deprivation of liberty for up to two years or a fine.

[73] Whoever, in spite of an entitled person's request, does not leave a place referred to in §1, shall be subject to a penalty of deprivation of liberty for up to one year or a fine.

[74] K. Daszkiewicz-Paluszyńska was critical about the idea to treat failure to leave a place as an aggravated type (Article 261 §4); K. Daszkiewicz-Paluszyńska, *Uwagi o przestępstwach przeciwko wolności i godności człowieka w projekcie k.k.*, Nowe Prawo No. 6, 1963, p. 669.

[75] The Chapter lists the following offences: deprivation of liberty (Article 161), threat (Article 162), coercion (Article 163), trespass on the domestic peace (Article 164), rape (Article 165), sexual intercourse with a mentally ill person (Article 166), abuse of the relationship of subjection (Article 167), homosexual prostitution (Article 168), procuring, pimping and facilitating prostitution (Article 169), distribution of pornography (Article 170), slander (Article 171), insult (Article 173), and infringement of bodily inviolability (Article 174).

ces against liberty")[76] liability of a person who invades somebody else's house, apartment, premises or fenced real estate connected with their use or serving as a place of stay, or does not leave them regardless of the entitled person's request. A perpetrator of such an act should be subject to a penalty of deprivation of liberty for up to two years, limitation of liberty or a fine (and prosecution was initiated based on private charges). Therefore, as it is seen, there were very insignificant changes in the treatment of the offence in comparison to the Bill of 1966: instead of the term "fenced real property" (*posiadłość*), the term "fenced real estate" (*nieruchomość*) was used (and instead of the sanction of correctional work, a penalty of limitation of liberty was introduced).[77] The provision (with slight modifications) became Article 171 of the Criminal Code of 1969 (placed in Chapter XXII "Offences against liberty")[78]. The change consisted only in the use of the phrase "fenced plot of land" instead of "fenced real estate". All the other features (as well as the sanction and the mode of prosecution) remained unchanged.[79] It was emphasised in the doctrine that Article 171 of the Criminal Code of 1969 broadly implemented the inviolability of the home guaranteed in Article 87 para. 2[80] of the Constitution of the Polish People's Republic of 1952 and that the formulation of the provision "indicates that the traditional term 'domestic peace' should be interpreted broadly; thus, the term 'the home' should cover not only residential premises but also those used for other purposes as well as plots of land, e.g. allotments".[81] It was also indicated that invasion should be interpreted as an unauthorised entry into places

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[76] The Chapter lists the following offences: deprivation of liberty (Article 171), threat (Article 172), coercion (Article 173), rape (Article 174), sexual intercourse with a mentally ill person (Article 175), abuse of the relationship of subjection (Article 176), trespass on the domestic peace (Article 177), and infringement of the secrecy of correspondence. A decision was taken not to include in the special part of the code: the provision on extradition of a person to another country (Article 248 §2 Criminal Code of 1932) and on slavery and trafficking in slaves (Article 249 Criminal Code of 1932), called the offences under conventions, which were placed in the provisions implementing the Criminal Code. In general, all the above-mentioned solutions were transferred to the Criminal Code of 1969 but the numbers of the provisions were changed; Chapter XXII "Offences against liberty" contained Articles 165–172.

[77] Very important changes were introduced to the construction (and the title) of the Chapter; instead of "Offences against liberty and dignity" (Bill of 1966), "Offences against liberty" appeared (Bill of 1968), which was an absolutely better solution (although the scope of offences listed in the Chapter raised doubts).

[78] The Chapter lists the same offences as in Chapter XXIII of the Bill of 1968. Only the numbers were changed.

[79] The final wording of this provision was as follows: "§1. Whoever invades somebody else's house, apartment, premises, fenced lot of land connected with their use or serving as a place of stay or regardless of an entitled person's request does not leave this place, shall be subject to a penalty of deprivation of liberty for up to two years, limitation of liberty or a fine. §2. Prosecution shall be initiated based on private charges."

[80] Article 87 para. 2: the statute protects inviolability of apartments and secrecy of correspondence. A house search is admissible only in cases determined by statute.

[81] M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny. Komentarz*, Warsaw 1977, p. 437. For more on the issue, compare T. Bojarski, *Karnoprawna ochrona*…, p. 62 ff; *idem*, *Zakres miejsc chronionych przy przestępstwie naruszenia miru domowego*, Annales UMCS, Sectio G, Vol. 10, 1970, pp. 247–272. It was controversial whether Article 171 of the Criminal Code of 1969 also took into account premises being in the disposal of state and social institutions. Compare M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski, *Kodeks*…, p. 439.

listed in Article 171 of the Criminal Code of 1969 against the apparent or supposed will of a person entitled to dispose of them. At the same time, a perpetrator did not have to use violence or threat against a person (thus, a house could be entered deceitfully, secretly, through an open window, etc.).[82] In case of failure to leave a house or another place regardless of an entitled person's request, a perpetrator, even the one who entered the house legally, was subject to a penalty. The offence of the trespass to the domestic peace was recognised the moment a perpetrator invaded or refused to leave a place, although he was requested to do that; the latter form lasted until a perpetrator left the place.[83] It was indicated in literature that a person entitled to request that a perpetrator leave the place listed in the analysed provision was not only an owner (lessee, tenant) but also a person (family member, domestic servant, employee, caretaker, etc.) who substituted for an owner (lessee, tenant) at the time.[84] The offence under Article 171 of the Criminal Code of 1969 was a common intentional crime, and the intent was only direct.[85]

It should be emphasised that in the project to amend the Criminal Code (developed by the Committee for amending criminal law) of August 1981, it was planned to add the following phrase at the end of Article 171 §2: "when the act concerns premises owned by a state or social institution – *ex officio*".[86] This idea unambiguously indicates that, in the opinion of the Committee, there were no doubts that the trespass on the domestic peace could not be limited to private premises. On the other hand, in the so-called social project it was only planned to change the sanction under Article 171 §1 of the Criminal Code (it was to be only a penalty of limitation of liberty or a fine).[87]

5. PRESENT TIMES

In accordance with the Criminal Code Bill prepared by the Committee for criminal law reform (the version of 5 March 1990),[88] the wording of Article 180 §1 (placed in Chapter XXIII "Offences against liberty"[89]) was as follows: "Whoever invades

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[82] M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski, *Kodeks*…, p. 438; O. Chybiński, [in:] O. Chybiński, W. Gutekunst, W. Świda, *Prawo karne, część szczególna*, Wrocław–Warsaw 1975, p. 173; I. Andrejew, *Polskie prawo karne w zarysie*, Warsaw 1971, p. 349.

[83] M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski, *Kodeks*…, p. 438.

[84] *Ibid*.

[85] O. Chybiński, [in:] O. Chybiński, W. Gutekunst, W. Świda, *Prawo karne*…, p. 175.

[86] *Projekt zmian przepisów kodeksu karnego*, Wydawnictwo Prawnicze, Warsaw August 1981, p. 22.

[87] *Wstępny społeczny projekt nowelizacji ustawy z dnia 19 kwietnia 1969 r. Kodeks karny. Opracowanie Komisji Kodyfikacyjnej powołanej przez I Ogólnopolskie Forum Pracowników Wymiaru Sprawiedliwości NSZZ "Solidarność"*, Kraków January–May 1981, *Obywatelskie inicjatywy ustawodawcze Solidarności 1980–1990*, Wydawnictwo Sejmowe, Warsaw 2001, p. 197.

[88] Komisja do spraw reformy prawa karnego, Zespół prawa karnego materialnego i wojskowego, *Projekt kodeksu karnego (przeznaczony do dyskusji środowiskowej), redakcja z 5 marca 1990 r.*, Warsaw 1990, pp. 60–61.

[89] The Chapter lists the following offences: unlawful deprivation of liberty (false imprisonment) (Article 177), threat (Article 178), coercion (Article 179), trespass to the domestic

somebody else's house, apartment, premises or fenced area, or regardless of an entitled person's request does not leave the place is subject to a penalty of a fine, limitation of liberty or deprivation of liberty for a period of up to one year." An attempt to commit the offence was punishable[90] (Article 180 §2), and prosecution was initiated based on private charges, and in case of premises of an institution or public authorities, prosecution was initiated based on a motion of the aggrieved party (under Article 180 §3).

Article 193[91] of the currently binding Criminal Code of 1997 (placed in Chapter XXIII "Offences against liberty")[92] has the same wording as Article 180 of the Bill of 5 March 1990. On the other hand, in relation to Article 171 of the formerly binding Criminal Code of 1969, the only difference concerns "fenced plot of land connected with their use or serving as a place of stay". Instead of that phrase, there is a feature: "fenced area". The maximum sanction was lowered (to one year of deprivation of liberty) and the sequence of penalties laid down in the provision (from the most lenient to the most severe, i.e. a fine, limitation of liberty and deprivation of liberty for up to one year);[93] the mode of prosecution

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peace (Article 180), infringement of the secrecy of correspondence and telephone tapping (Article 181).

[90] In accordance with Article 13 §1 of the Criminal Code Bill, an attempt to commit an offence carrying a penalty not exceeding two years of deprivation of liberty or more lenient was to be punished only when the statute stipulated that. A penalty imposed for an attempt could not exceed two-thirds of the maximum penalty for the act commission (Article 13 §2).

[91] "Whoever invades somebody else's house, apartment, premises or fenced area or regardless of an entitled person's request does not leave the place shall be subject to a fine, a penalty of limitation of liberty or deprivation of liberty for up to one year."

[92] Originally the Chapter listed five types of offences: unlawful deprivation of liberty (Article 189), threat (Article 190), coercion (Article 191), medical treatment without a patient's consent (Article 192), and trespass on the domestic peace (Article 193). As a result of the changes, successive types of offences were introduced: (1) recording of an image of a naked person or a person involved in a sexual intercourse or distribution of such content (Article 191a) – based on the Act of 5 November 2009 amending the Act: Criminal Code, the Act: Criminal Procedure Code, the Act: Penalty Execution Code, the Act: Fiscal Penal Code and some other acts (Journal of Laws [Dz.U.] No. 206, item 1589, as amended); (2) trafficking in humans (Article 189a) – the Act of 20 May 2010 amending the Act: Criminal Code, the Act on the Police, the Act: Provisions implementing the Criminal Code and the Act: Criminal Procedure Code (Journal of Laws [Dz.U.] No. 98, item 626); (3) persistent stalking and impersonation (Article 190a) – the Act of 25 February 2011 amending the Act: Criminal Code (Journal of Laws [Dz.U.] No. 72, item 381). The Act of 10 September 2015 amending the Act: Criminal Code, the Act: Construction law and the Act: Misdemeanour Procedure Code (Journal of Laws [Dz.U.] of 2015, item 1549) added §1a to Article 191 (criminalising the so-called indirect violence) and it was decided to prosecute the offences based on a motion filed by the aggrieved (Article 191 §3). There were also two amendments to the provisions of Article 189, in accordance with the Act of 17 December 2009 amending the Act: Criminal Code and the Act: Criminal Procedure Code, Journal of Laws [Dz.U.] of 2010, No. 7, item 46, which amended the wording of §2, and in accordance with the Act of 23 March 2017 amending the Act: Criminal Code, the Act on the procedure concerning juveniles and the Act: Criminal Procedure Code, Journal of Laws [Dz.U.] of 2017, item 773, which added §2a (in case deprivation of liberty referred to in §2 concerning a person who is helpless due to their age, psychical or physical condition, a perpetrator shall be subject to a penalty of deprivation of liberty for a period of two to twelve years).

[93] It results from the new philosophy of the Criminal Code of 1997, in accordance with which the catalogue of penalties is organised pursuant to an abstract concept of hardship: from

also changed (it is an offence prosecuted *ex officio*). It is emphasized in the doctrine that public prosecution mode in case of the trespass on the domestic peace is not justified.[94] It can be deemed that the change of the mode of prosecution resulted in sudden increase in the number of offences under Article 193 of the present Criminal Code (e.g. in 1995, thus still pursuant to the Criminal Code of 1969, there were 184 cases of the trespass on the domestic peace, in 1999 there were 2,004 cases and in 2016 – 2,431 ones reported).[95] At the time when it was necessary to demonstrate a certain amount of activity (development of a private indictment and payment of a lump sum), the will to activate the apparatus of justice definitely weakened. At present, when it is enough to report the commission of an offence, the number of people willing to take such steps is much bigger.[96] Of course, inviolability of the home is recognized as a personal right in Article 23 Civil Code and guaranteed in Article 50 of the Constitution ("The inviolability of the home shall be ensured. Any search of a home, premises or vehicles may be made only in cases and in a manner specified by statute")[97]. It is also worth reminding that the projects to change the Criminal Code of 1997 envisaged introduction of an aggravated type of the trespass on the domestic peace because of a perpetrator's modus operandi consisting in the use of violence or a threat of using violence.[98]

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the most lenient to the most severe; this organisation, together with the principles determined in Articles 3 and 53–59, is to indicate the statutory priorities a judge should take into account when choosing the type of punishment. I. Fredrich-Michalska, B. Stachurska-Marcińczak (eds), *Nowe kodeksy karne z 1997 r. z uzasadnieniami*, Warsaw 1997, p. 137.

[94] A. Zoll, [in:] W. Wróbel, A. Zoll (eds), *Kodeks karny. Część szczególna. Komentarz*, Vol. 2: *Komentarz do art. 117–211a*, Warsaw 2017, p. 628.

[95] M. Mozgawa, [in:] J. Warylewski (ed.), *System Prawa Karnego. Przestępstwa przeciwko dobrom indywidualnym*, Vol. 10, Warsaw 2016, p. 569, http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-4/63488,Naruszenie-miru-domowego-art-193.html (accessed on 20/01/2018).

[96] Compare M. Mozgawa, [in:] J. Warylewski (ed.), *System…*, p. 587.

[97] Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warsaw 2015, p. 165. According to P. Sarnecki, "Inviolability" of the home, which can be described as undisturbed use of one's home (called domestic peace), is also an individual's classical liberty (of a personal nature), serving (in particular) his/her psychical integrity and being clearly connected with his/her declared dignity. It is also clearly connected with the right to privacy and may be treated as one of its indicators. On the other hand, the "violation of the home", within the constitutional meaning, is recognised not in case of conducting technical construction work that can result in "violation" (damage or even destruction) of the home but only in case of entry without permission of the people living there or failure to leave on residents' request. Thus, the "inviolability of the home" cannot be interpreted as only a ban on "searching" (without sufficient grounds) but also as a ban on any unwarranted entry and stay in it. Thus, not only a "search" may take place "exclusively in cases laid down in statute and in the way determined in it" but also other types of entry into other people's homes require that, in particular in case of public officials or employees of public services. It does not negate the recognition of a "search" as the most painful violation of the ban on entering the "area" of the home. P. Sarnecki, [in:] L. Garlicki, M. Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 2, 2nd edn, LEX el, commentary on Art. 50, thesis 3, https://sip.lex.pl/#/commentary/587744260/541700/garlicki-leszek-red-zubik-marek-red-konstytucja-rzeczypospolitej-polskiej-komentarz-tom-ii-wyd-ii?cm=URELATIONS (accessed on 20/01/2018).

[98] Compare the Bill amending the Act: Criminal Code and some other acts (undated – M.M., A.W.), https://bip.kprm.gov.pl/ftp/kprm/dokumenty/070523u2.pdf (accessed on 20/01/2018). Article 193 of the Bill has the following wording: "§1. Whoever invades somebody else's house,

Due to the fact that the topic of the Article is the historic aspect of the trespass on the domestic peace (and taking into account its frame), the below-presented analysis of the statutory features of Article 193 of the Criminal Code of 1997 (henceforth also CC) will be limited to a necessary minimum. As far as the special object of protection is concerned, it is undoubtedly liberty (which is confirmed by the placement of the provision in Chapter XXIII "Offences against liberty"). However, the doctrine treats the individual object of protection in a varied way. For instance, according to A. Zoll, the provision protects an individual's liberty against breaches of his right to decide who can stay in places of which he is a holder;[99] in R.A. Stefański's opinion, it concerns an individual's freedom from any disturbances to exclusive use of real estate specified in the provision; and according to A. Marek, it is a man's right to peaceful living, free from unwanted people's interference (and this protection is also extended on the use of commercial premises remaining in a given person's disposal permanently or temporarily)[100].

The offence of the trespass on the domestic peace may be committed by both action (invasion)[101] and omission (failure to leave the place regardless of an entitled person's request)[102]. Due to the alternative description of the features of the subject-related aspect of the offence under Article 193 CC, the implementation of both alternatives by a perpetrator (i.e. first invasion and then failure to leave a given place regardless of an entitled person's request) constitutes one offence; according to A. Zoll, a court should take this "surplus of illegal action" into account when imposing a penalty.[103]

Analysing the feature of "an entitled person's request", one should state that "request" means a definite and clear expression of an entitled person's will aimed at making a given person leave his house, apartment, premises or fenced area.[104] As a rule, a person who is present at the place should make a request; however, it is possible to express this request on the phone, by post or email, or a messenger.[105] Staying in a place becomes illegal the moment a request reaches an addressee.[106]

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apartment, premises, quarters, fenced area or vehicle or regardless of an entitled person's request does not leave such a place shall be subject to a penalty of deprivation of liberty for up to three years. § 2. If the perpetrator of an offence referred to in §1 uses violence towards a person or threatens to use it, he shall be subject to a penalty of deprivation of liberty for a period of one to ten years. §3. Prosecution of the offence referred to in §1 shall be initiated on a motion filed by the aggrieved." Also compare J. Wojciechowska, [in:] B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa przeciwko wolności, wolności sumienia i wyznania, wolności seksualnej i obyczajności oraz czci i nietykalności cielesnej. Komentarz*, Warsaw 2001, p. 70.

[99] A. Zoll, [in:] W. Wróbel, A. Zoll (eds), *Kodeks…*, p. 622.

[100] A. Marek, *Kodeks karny. Komentarz*, Warsaw 2010, p. 443.

[101] For more on the topic of invasion, compare the Supreme Court judgment of 14 August 2001, V KKN 338/98, LEX No. 52067.

[102] For more on the verbal noun features of the analysed offence, compare T. Bojarski, *Pojęcie "wdarcia się" i "nieopuszczenia" przy przestępstwie naruszenia miru domowego*, Ruch Prawniczy, Ekonomiczny i Socjologiczny No. 4, 1971, p. 35 ff.

[103] A. Zoll, [in:] W. Wróbel, A. Zoll (eds), *Kodeks…*, p. 625.

[104] J. Wojciechowska, [in:] B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa…*, p. 67.

[105] M. Mozgawa, [in:] J. Warylewski (ed.), *System…*, p. 574.

[106] T. Bojarski, *Naruszenie miru domowego*, [in:] *System prawa karnego*, Vol. 4: *O przestępstwach w szczególności*, Part 2, Ossolineum 1989, p. 63.

Failure to leave somebody's house, apartment, etc. (regardless of an entitled person's request) is always an offence committed (an attempt is not possible). The trespass on the domestic peace (both invasion and failure to leave) is a permanent offence. It can be deemed that the period of illegal state maintenance should influence the imposition of a penalty for the offence under Article 193 CC.

An "entitled person" within the meaning of Article 193 CC is first of all the one who, based on the provisions of the law, has the right to dispose of the given place in the manner which causes that for other people who do not have such a legal title this place is somebody else's.[107] It may be deemed, however, that an entitled person may also be one at whose disposal the place is although he/she has no legal title to it (e.g. a real estate holder). Therefore, it should be stated that in the context of Article 193 CC the scope of entitled persons seems to be quite broad; obviously, first of all, it is the owner but also a lessee, a tenant or a holder (even without a legal title).[108] In some cases, an entitled person may also be a person authorised by the originally entitled person, also in the field of taking decisions who and when can stay in the given place (e.g. a doorkeeper, a watchman, a guard, an authorised neighbour, a relative temporarily taking care of an apartment in the owner's absence, etc.).[109] It may happen that a few people will have the status of an entitled person (e.g. in case of spouses' co-ownership or other types of co-ownership), and in such situations there may be a conflict of rights.[110]

The provision of Article 193 CC lists the following objects of an executive action: a house, an apartment, premises, and a fenced area (and definitions of those terms raise a series of interpretational doubts).[111] One can exercise the right of self-defence against a perpetrator of the trespass on the domestic peace in the

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[107] A. Zoll, [in:] W. Wróbel, A. Zoll (eds), *Kodeks*…, p. 626. Also compare the Supreme Court judgment of 3 February 2016, III KK 347/15, LEX No. 1976247 ("The legal relation of a perpetrator to an object that he/she is to occupy or does not want to leave is one of the essential elements of an offence under Article 193 CC. It is to constitute 'somebody else's' property for the perpetrator. The features of the offence of the trespass on the domestic peace can only be implemented by a person who does not have, based on the binding provisions or a contract entered into by the parties, the right to enter the object that is formally 'somebody else's' property"). Also compare M. Kućka, *Znamię "cudzy" i próba określenia normy sankcjonowanej: perspektywa prawa cywilnego (Głos do artykułu P. Dyluś i K. Wiśniewskiej)*, Czasopismo Prawa Karnego i Nauk Penalnych, Year XV, No. 3, 2011, pp. 33–35.

[108] Compare the Supreme Court ruling of 3 February 2011, V KK 415/10, OSNKW 2011, No. 5, item 42.

[109] A. Zoll, [in:] W. Wróbel, A. Zoll (eds), *Kodeks*…, p. 626; M. Mozgawa, [in:] J. Warylewski (ed.), *System*…, p. 575.

[110] For more details on the issue, compare M. Mozgawa, [in:] J. Warylewski (ed.), *System*…, pp. 575–576; A. Langowska, *Wielość osób uprawnionych na gruncie art. 193 k.k. – wybrane problemy*, e-Czasopismo Prawa Karnego i Nauk Penalnych No. 3, 2013, http://www.czpk.pl/index.php/preprinty/157-wielosc-osob-uprawnionych-na-gruncie-art-193-k-k-wybrane-problemy (accessed on 20/01/2018).

[111] Compare more closely, R.A. Stefański, *Prawnokarna ochrona miru domowego*, [in:] M. Mozgawa (ed.), *Prawnokarne aspekty wolności*, Kraków 2006, pp. 169–172; M. Mozgawa, [in:] J. Warylewski (ed.), *System*…, pp. 576–578.

form of action (invasion) as well as omission (failure to leave in spite of an entitled person's request).[112]

The doubts raised in the doctrine concern the question whether the legal protection under Article 193 CC covers only private or also public premises.[113] It should be highlighted that the Supreme Court in its resolution (of seven judges) of 13 March 1990 (V KZP 33/89),[114] in our opinion rightly, stated that the aggrieved party could include a legal person and a state or social institution even with no legal personality. In accordance with the binding Criminal Code, there is an additional argument for the protection of premises belonging to state or social institutions under Article 193. It is the fact that the offence is subject to public prosecution.[115]

It is a substantive offence (in both forms: invasion and failure to leave the given place), which results in the trespass on the domestic peace, not violated so far, causing a new situation constituting a change in the external world.[116] The offence of the trespass on the domestic peace is common in nature and can only be committed intentionally with a direct intent. A perpetrator must be aware of the fact that he enters a place without legal grounds and without the permission of a person entitled to a place indicated in the provision, or that he stays in the place regardless of an entitled person's request.[117] It is rightly indicated in case law that also an owner (of a house, an apartment, premises or a fenced area) may be a perpetrator of the trespass on the domestic peace.[118]

The offence of the trespass on the domestic peace is not committed in case somebody else's house, apartment, premises or fenced area is entered by a body of

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[112] T. Bojarski, *Karnoprawna ochrona…*, p. 153 ff. Also compare the Supreme Court ruling of 15 April 2015, IV KK 409/14, OSNKW 2015, No. 9, item 78.

[113] For more details on the issue, compare M. Królikowski, A. Sakowicz, [in:] M. Królikowski, R. Zawłocki (eds), *Kodeks karny. Część szczególna*, Vol. 1: *Komentarz do art. 117–221*, Warsaw 2017, pp. 631–632; M. Mozgawa, [in:] J. Warylewski (ed.), *System…*, p. 579.

[114] OSNKW 1990, No. 7–12, item 23.

[115] M. Filar, M. Berent, [in:] M. Filar (ed.), *Kodeks karny. Komentarz*, Warsaw 2016, p. 1193.

[116] Thus, inter alia, T. Bojarski, *Karnoprawna ochrona…*, p. 116; J. Wojciechowska, [in:] B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa…*, p. 68; M. Mozgawa, [in:] M. Mozgawa (ed.), *Kodeks karny. Komentarz*, Warsaw 2017, p. 594. Other authors who are for the formal character of the offence are, inter alia, O. Chybiński, [in:] O. Chybiński, W. Gutekunst, W. Świda, *Prawo karne…*, p. 174; M. Królikowski, A. Sakowicz (eds), *Kodeks karny…*, p. 634.

[117] M. Mozgawa (ed.), *Kodeks karny…*, p. 594.

[118] Compare, inter alia, the Supreme Court judgment of 7 May 2013, III KK 388/12, LEX No. 1319262: "The features of the offence referred to in Article 193 CC may be implemented only by a perpetrator who has no right, in accordance with the binding provisions or the existing relations or contracts between the parties, to enter an object that is formally 'somebody else's' property, and a person who obtains access to such an object in accordance with the binding law or as a result of civil law agreements becomes an entitled person within the meaning of Article 193 CC – also in relation to the owner of the object with limitations pursuant to civil law"; the Supreme Court ruling of 21 July 2011, I KZP 5/11, OSNKW 2011, No. 8, item 65 ("The owner of a house, apartment, premises, quarters or a fenced area may also be a perpetrator of the offence of the trespass on the domestic peace referred to in Article 193"). Also compare, inter alia, P. Dyluś, K. Wiśniewska, *Właściciel jako podmiot czynności sprawczej przestępstwa z art. 193 k.k.*, Czasopismo Prawa Karnego i Nauk Penalnych, Year XV, No. 3, 2011, pp. 17–31; M. Pająk, *Mir domowy czy właścicielski*, Czasopismo Prawa Karnego i Nauk Penalnych, Year XV, No. 3, 2011, pp. 5–15.

public authorities in situations laid down in the provisions of the law (e.g. search of premises and other places: Article 219 of the Criminal Procedure Code, Article 15 para. 1(4) of the Act of 6 April 1990 on the Police[119]; Article 23 para. 1(4) of the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency[120]; Article 39 para. 2 of the Act of 13 October 1995: Hunting law[121]; Article 47 para. 2(4) of the Act of 28 September 1991 on forests[122]; Article 64 para. 1(6), Article 77 of the Act of 16 November 2016 on the National Revenue Administration[123]).[124] It is also necessary to remember that pursuant to the Civil Code, an owner of land may enter the neighbouring land in order to remove his tree branches or fruit hanging over it (Article 149 Civil Code), and an owner of a bee swarm chasing it on somebody else's land (Article 182 §1 Civil Code).

Analysing the solutions adopted in the Polish criminal codes (of 1932, 1969 and 1997), one should state that they are similar, which confirms that the idea of the Criminal Code of 1932 was right and stood the test of time. In each of them, the offence of the trespass on the domestic peace was placed in a chapter dealing with offences against liberty (Chapter XXXVI of the Criminal Code of 1932, Chapter XXII of the Criminal Code of 1969, Chapter XXIII of the Criminal Code of 1997). In all the three codes, the crime features were expressed in the same way (invasion or failure to leave a place regardless of an entitled person's request). The object of the executive action was formulated in a little different way: in the Criminal Code of 1932 – somebody else's apartment, premises, company, real property fenced in connection with living there or fenced and serving as a place of stay; in the Criminal Code of 1969 – somebody else's house, apartment, premises or fenced plot of land connected with their use or serving as a place of stay; in the Criminal Code of 1997 – somebody else's house, apartment, premises or fenced area. In comparison with the formerly binding codes, the sanction for the offence was made considerably more lenient in the Criminal Code of 1997. At present, it is a penalty of a fine, limitation of liberty or deprivation of liberty for up to one year; and the Criminal Codes of 1932 and of 1969 stipulated a penalty of deprivation of liberty for up to two years.[125] Under the said codes, the offence of the trespass on the domestic peace was prosecuted based on private charges and under the presently binding code – *ex officio*. It can be deemed that the present approach to the analysed offence is in general right. However, in order to definitely eliminate doubts whether the protection of the domestic peace covers only private premises

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[119] Journal of Laws [Dz.U.] of 2017, item 2067, consolidated text.

[120] Journal of Laws [Dz.U.] of 2017, item 1920, consolidated text.

[121] Journal of Laws [Dz.U.] of 2017, item 1295, consolidated text.

[122] Journal of Laws [Dz.U.] of 2017, item 788, consolidated text.

[123] Journal of Laws [Dz.U.] of 2016, item 1947.

[124] Also compare comments by S. Hoc, *Czy potrzebny jest kontratyp naruszenia miru domowego*, [in:] A. Michalska-Warias, I. Nowikowski, J. Piórkowska-Flieger (eds), *Teoretyczne i praktyczne problemy współczesnego prawa karnego. Księga jubileuszowa dedykowana profesorowi Tadeuszowi Bojarskiemu*, Lublin 2011, pp. 123–132.

[125] Precisely speaking, the Criminal Code of 1932 laid down a penalty of imprisonment (or a fine) for the infringement of the domestic peace and the Criminal Code of 1969 – a penalty of deprivation of liberty for up to two years, limitation of liberty or a fine.

or also public ones, it is necessary to solve the problem unambiguously. It seems that it can be achieved by the implementation of the proposal of the Committee for criminal law reform (in the version of 5 March 1990), and concerning the mode of prosecution. It appears justified to adapt an idea of initiating the prosecution of this offence based on private charges, and in case an act concerns promises of public authorities or an institution, prosecution should be initiated on a motion of the aggrieved party. Such an idea, first of all, would eliminate the existing doubts concerning the scope of the provision; secondly, as it seems, it might considerably decrease the number of reported offences under Article 193 CC. On the other hand, the proposal concerning the introduction of an aggravated type of the offence because of a perpetrator's use of violence or a threat of using it should be considered carefully.[126] Over the last 85 years, this aggravated type has not existed in our legal system and, nevertheless, the law enforcement bodies have managed to deal with the problem within the basic type. The currently binding Criminal Code is very casuistic, thus it is not necessary to increase this casuistry. *De lege lata* when a perpetrator commits the trespass on the domestic peace with the use of violence or illegal threat, it should be reflected in the application of cumulative classification (Article 193 in conjunction with Article 191 §1 in conjunction with Article 11 §2 CC) and the imposition of a penalty.

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CRIMINAL-LAW PROTECTION OF DOMESTIC PEACE IN THE TERRITORY OF POLAND

Summary

The trespass on the domestic peace has been a prohibited act in the Polish state (or in the territories that were originally Polish) for over a thousand years (from the Middle Ages till now). During that long period, one can observe various modifications to the definition of the offence. It seems that invasion or intrusion is the main concept. In some periods, the invasion of land and the intrusion of an apartment, a church, a school, a fenced square, a cemetery, a cultivated field, etc. were penalised following the same rules. Gradual but consistent mitigation of penalties: from death penalty in old times through imprisonment (deprivation of liberty) to an alternatively determined (and relatively lenient) sanction under the currently binding Criminal Code of 1997 (a fine, limitation of liberty or deprivation of liberty for up to one year) should be recognised as a regularity. What is worth mentioning is a very similar approach to the trespass on the domestic peace in the Polish Criminal Codes of 1932, 1969 and 1997 (the features of the act were formulated in the same way: invasion or failure to leave, regardless of an entitled person's request, but the objects of the executive action were specified differently).

Keywords: domestic peace, intrusion, invasion, failure to leave, house, apartment, premises, fenced area, entitled person's request

PRAWNOKARNA OCHRONA MIRU DOMOWEGO NA ZIEMIACH POLSKICH

Streszczenie

Naruszenie miru domowego było czynem zabronionym w państwie polskim (bądź na ziemiach polskich) przez ponad tysiąc lat (od średniowiecza po dzień dzisiejszy). W ciągu tego długiego okresu można zaobserwować różne modyfikacje definicji tego przestępstwa. Wydaje się, że podstawowe pojęcie to bezprawny napad lub najście na czyjś dom. W różnych okresach na takich samych zasadach penalizowano także najazdy na dobra ziemskie, wtargnięcie do mieszkania, kościoła, szkoły, na ogrodzony plac, na cmentarz, na uprawiane pole i inne. Za prawidłowość można uznać stopniowe, ale konsekwentne łagodzenie zagrożenia wymiarem kary: od kary śmierci w dawnej Polsce, poprzez karę więzienia (pozbawienia wolności), do alternatywnie określonej (i stosunkowo łagodnej) sankcji na gruncie obowiązującego k.k. z 1997 r. (grzywna, kara ograniczenia wolności albo pozbawienia wolności do roku). Na uwagę zasługuje bardzo zbliżone ujęcie przestępstwa naruszenia miru domowego w polskich kodeksach karnych z lat 1932, 1969 i 1997 (tak samo ujęte zostały znamiona czasownikowe: wdzieranie się albo wbrew żądaniu osoby uprawnionej nieopuszczenie danego miejsca, zaś w nieco zróżnicowany sposób ujmowano przedmioty czynności wykonawczej).

Słowa kluczowe: mir domowy, najście, wdzieranie się, nieopuszczenie, dom, mieszkanie, lokal, ogrodzony teren, żądanie osoby uprawnionej

TUTELA DE INVIOLABILIDAD DE DOMICILIO EN EL TERRITORIO POLACO

Resumen

La infracción de inviolabilidad de domicilio es un hecho típico en el estado polaco (o en el territorio polaco) durante más de mil años (desde la edad media hasta hoy). Durante este largo periodo se podía observar varias modificaciones de la definición de este delito. Parece que el concepto básico consiste en ataque o invasión antijurídica de vivienda de alguien. En diferentes períodos se criminalizaba de la misma forma también invasión a terrenos, allanamiento de vivienda, iglesia, escuela, plaza vallada, campo con cultivos, etc. Parece correcto que paulatinamente con el trascurso del tiempo la pena por este delito se iba disminuyendo: desde la pena de muerte en Polonia antigua, a través de la pena de prisión (privación de libertad) hasta llegar a la sanción alternativa (y relativamente leve) vigente en el código penal de 1997 (multa, pena de restricción de libertad o privación de libertad de hasta un año). El delito de allanamiento de morada fue regulado de manera muy similar en los códigos penales polacos de 1932, 1969 y 1997 (los mismos verbos: invadir o no abandonar un lugar determinado previo requerimiento de la persona autorizada, sin embargo de una manera diferente denominaban sujeto pasivo de delito).

Palabras claves: inviolabilidad de domicilio, invasión, allanamiento, no abandonar, casa, piso, local, terreno vallado, requerimiento de persona autorizada

УГОЛОВНО-ПРАВОВАЯ ЗАЩИТА НЕПРИКОСНОВЕННОСТИ ЖИЛИЩА НА ПОЛЬСКИХ ЗЕМЛЯХ

Резюме

Нарушение неприкосновенности жилища в польском государстве (либо в польских регионах) было запрещённым деянием на протяжении более чем тысячи лет (от средневековья до наших дней). В течение этого длительного периода времени можно было наблюдать различные модификации дефиниции упомянутого выше преступления. Основное толкование понятия основано на ассоциациях с беззаконным нападением либо вторжением в чьё-либо жилище. В разные периоды на тех же принципах подвергались судебному преследованию вторжения на земельные участки, в квартиры, костёлы, школы, на огороженные площадки, на кладбища, посевные поля и т. д. Закономерным можно считать постепенное, но последовательное смягчение степени наказания: от смертного приговора в польском государстве древнейшей поры, через тюремное заключение (наказание в виде лишения свободы), до альтернативных (относительно мягких) санкций на основании действующего УК от 1997 года (штраф, наказание в виде ограничения свободы или лишения свободы до одного года). Внимания заслуживает достаточно схожая трактовка преступления, квалифицируемого как нарушение неприкосновенности жилища, в польских версиях УК от 1932, 1969 і 1997 гг. (подобной трактовке подверглись такие признаки состава преступления, как вторжение либо – вопреки требованию уполномоченного лица – отказ освободить ту или иную площадь или место; и в то же время более или менее дифференцированным образом были интерпретированы действия в рамках исполнительного производства).

Ключевые слова: неприкосновенность жилища, нашествие, вторжение, нападение, отказ освободить, дом, квартира, помещение, огороженная территория, требование уполномоченного лица

STRAFRECHTLICHER HAUSFRIEDENSSCHUTZ AUF POLNISCHEM LANDESGEBIET

Zusammenfassung

Der Hausfriedensbruch war ein unerlaubtes Delikt im polnischen Recht (oder auf polnischem Landesgebiet) für über eintausend Jahre (vom Mittelalter her bis zu heutigem Tage). In dieser langen Periode konnte man verschiedene Modifikationen dieser Deliktdefinition beobachten. Es scheint, dass der Hauptbegriff einen rechtswidrigen Überfall oder eine Heimsuche auf/in jemanden Haus darstellt. Man pönalisierte auf denselben Regeln auch Landgutüberfälle, Haus-, Kirchen-, Schulen-, abgezäunter Platz-, Friedhof-, Anbaufeldeingriff u.a. Als Gesetzmäßigkeit kann man eine schrittweise, jedoch konsequente Milderung der Strafenausmaßbedrohung: von der Todesstrafe in Alt Polen, über Gefängnisstrafe (Freiheitsstrafe), bis zur alternativ bestimmten (und verhältnismäßig milden) Sanktion auf Grund des geltenden SGB von 1997 (Buße, Freiheitseinschränkung oder Freiheitsstrafe) bis zu einem Jahr. Bemerkenswert ist eine sehr ähnliche Auffassung des Hausfriedensbruches im polnischen SBG von 1932, 1969 und 1987 (es wurden genauso die verbalen Straftatbestände – „eingreifen" oder wider der Aufforderung der befugten Person „nicht verlassen" eines Platzes benannt, dennoch wurden die Gegenstände einer Rechtstätigkeit in einer ziemlich unterschiedlichen Weise erfasst).

Schlüsselwörter: Hausfrieden, Eingriff, Heimsuche, Nichtverlassen, Haus, Wohnung, Lokal, abgezäuntes Gebiet, Aufforderung einer befugten Person

PROTECTION JURIDIQUE ET PÉNALE DU DOMICILE EN POLOGNE

Résumé

La violation du domicile était un acte interdit dans un État polonais (ou sur des terres polonaises) pendant plus de mille ans (du Moyen Âge à nos jours). Pendant cette longue période, diverses modifications peuvent être observées dans la définition de cet infraction. Il semble que le concept de base soit une une agression ou violation du domicile d'autrui sans son autorisation. À différentes époques, les perquisitions de biens-fonds, l'intrusion dans l'appartement, l'église, l'école, une cour clôturée, un cimetière, un champ cultivé, etc., étaient également sanctionnées dans les mêmes conditions. L'atténuation progressive mais cohérente de la menace de punition peut être considérée comme une régularité : de la peine de mort dans l'ancienne Pologne, en passant par la peine d'emprisonnement (privation de liberté), à une sanction alternative (et relativement légère) déterminée sur la base du code pénale applicable de 1997 (amende, restriction de liberté ou peine d'emprisonnement pouvant aller jusqu'à un an). Il convient de noter une approche très similaire à l'infraction de la violation du domicile dans les codes pénaux polonais de 1932, 1969 et 1997 (les signes verbaux étaient traités de la même manière - soit pénétrer dans le domicile d'autrui ou ne pas quitter l'endroit contre la demande de la personne autorisée, alors que les objets de l'activité exécutive étaient exprimé d'une manière légèrement différente).

Mots-clés: domicile, intrusion, pénétration par force, ne pas quitter le terrain d'autrui, maison, appartement, locaux, terrain clôturé, demande de la personne autorisée

TUTELA PENALE CONTRO LA VIOLAZIONE DI DOMICILIO NEI TERRITORI POLACCHI

Sintesi

La violazione di domicilio era un atto proibito nello stato polacco (o sulle terre polacche) per oltre mille anni (dal Medioevo ai giorni nostri). Durante questo lungo periodo si possono osservare varie modifiche della definizione di questo reato. Sembra che il concetto di base sia un'aggressione illegale o un'invasione all'abitazione altrui. In epoche diverse, secondo gli stessi principi, sono state penalizzate anche le invasioni in proprietà terriere, le invasioni in appartamenti, chiese, scuole, piazze recintate, cimiteri, campi coltivati, ecc. Per la regolarità si può considerare un graduale, ma coerente alleggerimento della minaccia della pena: dalla pena di morte nell'ex Polonia, attraverso la pena detentiva (reclusione), fino alla sanzione stabilita alternativamente (e relativamente lieve) sulla base del codice penale in vigore dal 1997 (multa, pena di restrizione della libertà o detentiva fino a un anno). Vale la pena di notare che il reato di violazione di domicilio nel codice penale polacco del 1932, del 1969 e del 1997 è trattato in modo molto simile (i componenti vervali del reato sono stati resi allo stesso modo – l'intrusione oppure l'occupazione in un determinato luogo contro la richiesta di una persona autorizzata, mentre gli oggetti dell'attività esecutiva sono trattati in modo leggermente differenziato).

Parole chiave: tutela di domicilio, invasione, intrusione, occupazione, casa, appartamento, locale, area recintata, richiesta di persona autorizzata

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